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ABSTRACT

This report to the United Nations Committee on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the U.N. Convention on the Rights of the Child by the nation of Ethiopia. The report's introduction asserts that despite the considerable lip service being paid by Ethiopia's government to children's rights, OMCT is concerned that the needs of the Ethiopian child with regard to gross violations of human rights are being overlooked. The report then presents observations and recommendations in the following areas: (1) the age of criminal responsibility; (2) torture, ill treatment, or other cruel or degrading treatment: the absence of protection; (3) draft legislation concerning torture; (4) current legislation concerning torture; (5) the right to redress; (6) corporal punishment as a punitive measure; (7) physical chastisement in institutions; (8) general protection from violence for children; (9) children in conflict with the law; (10) extensive discretionary powers of arrest; (11) arrest procedure; (12) further special powers of detention; (13) pre-trial detention; (14) the right to legal representation; (15) separation from adults in detention; (16) regular medical examinations; (17) heavy sentencing; and (18) solitary confinement. The report concludes with a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Ethiopia, in the following areas: positive factors, factors and difficulties impeding the implementation of the convention, principal subjects of concern, and suggestions and recommendations. (EV)

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Rights of the Child in ETHIOPIA

OMC

OPERATING THE SOS-TORTURE NETWORK

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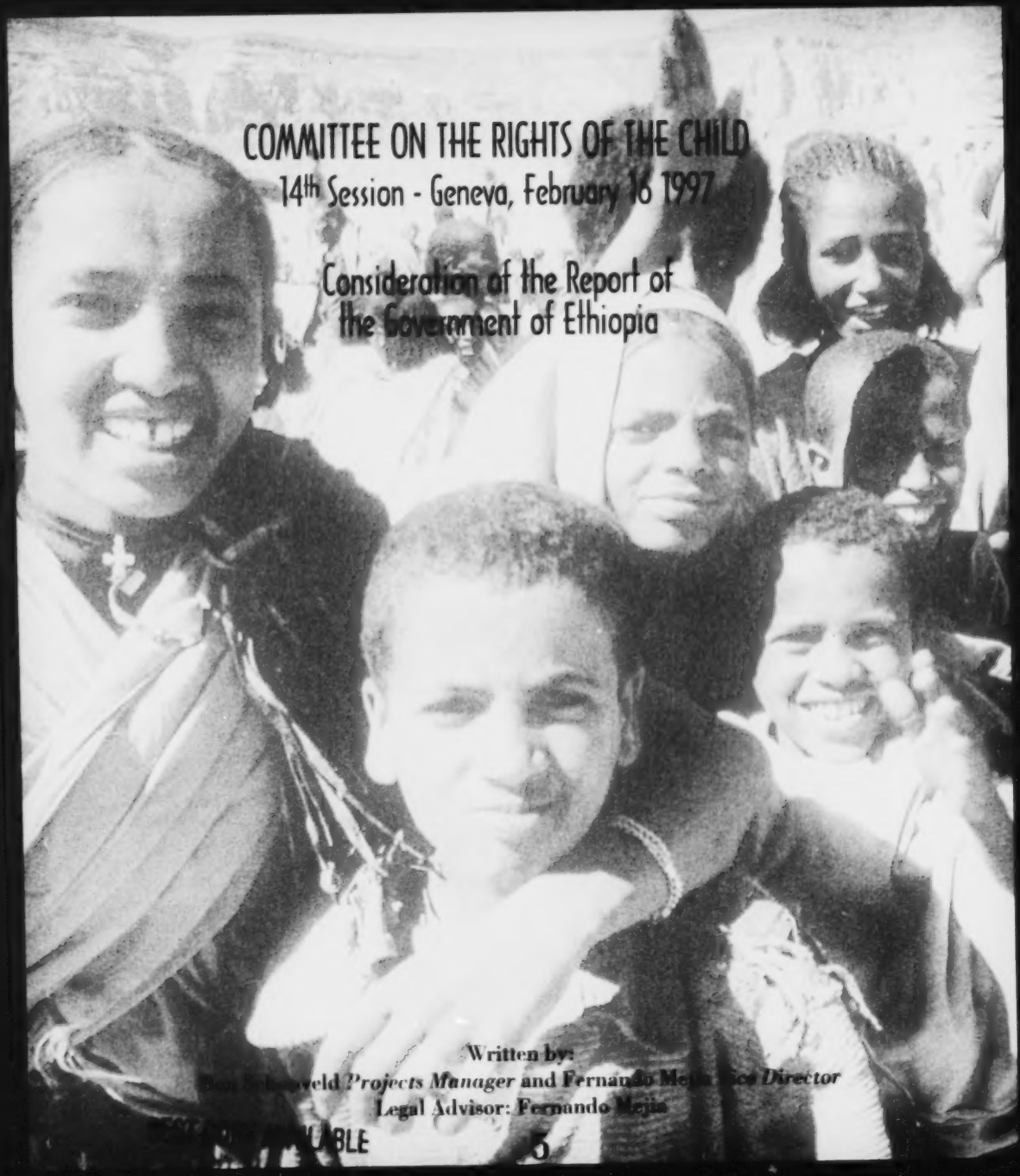
COMMITTEE ON THE RIGHTS OF THE CHILD
14th Session - Geneva, February 16 1997
Consideration of the Report of
the Government of Ethiopia

Written by:
Projects Manager and Fernando Mejía *Vice Director*
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BLE

The defeat of Ethiopia's former government, the Dergue, in 1991 marked the end of a decade-long history of civil conflict.

A draft Constitution established in 1994 and national elections held in 1995 have suggested that the new government is attempting to move toward an improved respect for human rights — including the first steps in the very difficult task of attempting to bring to justice former government officials on charges of genocide and crimes against humanity.

The Ethiopian government report has stated that it is committed to children's human rights and that its policies and laws are in line with the Convention on the Rights of the Child (CRC).

Despite the considerable lip service being paid to children's rights OMCT is concerned that the needs of the Ethiopian child with regard to gross violations of human rights are being overlooked.

Protection of the rights of the child from such violations is rarely addressed in existing Ethiopian legislation and is, where there is protection, often contradictory. Such legal protection that there is, subject to wide interpretation, and rarely implemented.

This report will focus on the existing protection offered to children against torture and other forms of inhumane treatment. The OMCT report hopes to outline weaknesses and the action needed to improve the protection offered to Ethiopian children from the scourge of torture.

The report presented to the Committee by the Ethiopian Government states very clearly its belief that the current Penal code and other legislation, which will be dealt with in this report, conform with the CRC, stating in paragraph 20: "*The penal code as criminal legislation adopted in 1957, provides ample protection for children against all forms of malicious treatment and exploitation by parent guardians or other members of society.*"

It goes further in paragraph 21 stating:

"*Thus it is believed that, with certain minor changes, the Major Ethiopian laws… The Penal Code, the Criminal Procedure Code… and the policies incorporated… are quite sufficient to translate the Convention on the rights of the Child*".

The aim of this report is to examine these claims.

The Age of Criminal Responsibility

The focus of this report will be to examine this all too brief examination of the legislation and de facto situations and will raise particular concerns with regard to protecting children from torture and other cruel, inhuman or degrading treatment or punishment.

The Convention on the Rights of the Child is very clear about the need to establish a minimum age of penal responsibility stating in article 40/3/a: *"the establishment of a minimum age below which children shall be presumed not to have infringed the penal law"*.

The Beijing Rules state very clearly the need to set the age of criminal responsibility at a reasonable level:

Paragragh 4.1
"In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."

Paragraph 40 of the government report, discussing the Penal code, lays out the three ages of responsibility:

- Article 52 of the penal code defines the minimum age of criminal responsibility
  Art. 52.- Infancy: Exoneration from Criminal Provisions.
  The provisions of this Code shall not apply to infants not having attained the age of nine years. Such infants are not deemed to be responsible for their acts under the law.
  Where an offence is committed by an infant, appropriate steps may be taken by the family, school or guardianship authority.

- Article 53 defines the ages of limited responsibility as between 9 and 15:
  Art.53. -Special provisions applicable to young persons.
  (1) Where an offence is committed by a young person between the ages of nine and fifteen the penalties and measures to be imposed by the Court shall be those provided in Book II, Chapter IV if this Code (Art. 161.173).

Young persons shall not be subject to the authority penalties applicable to adults nor shall they be kept in custody with adult offenders.

Addressed as "*young persons*" in the Penal Code, are children between the ages of 9 and 15 inclusive. For them, the Penal Code provide special punishments upon conviction and they are not subject to the ordinary penalties applicable to adults nor shall they be kept in custody with adult offenders.

The final group of juveniles aged between 15 and 18 are considered to fully responsible for their actions and with the exception of the death penalty face full penal responsibility.

- Article 57 of the penal code states:
  Art 57.- Principle: Criminal Fault and Accident.
  (1) If at the time of the offence the offender was over fifteen but under eighteen years of age he shall be tried under the ordinary provisions of this Code.

In addition to these stipulations, the Government report defines a minor in several different ways for example in paragraph 35 a minor is defined as under 18:

35. The Civil Code of 1960 defines the word child as a "minor" of either sex who has not attained the full age of 18 years. This definition is compatible with that provided in the Convention the Rights of the Child. Though the age of attaining majority is 18 years, for specific purposes a child may be emancipated at an earlier age. Emancipation takes places either by marriage or upon authorisation of the family council.

Throughout the report, the government makes reference to different and contradictory ages of the child. As will be seen, these contradictions have an impact on the rights of the child with particular reference to those rights covered by the mandate of OMCT.

With regard to giving testimony in court paragraph 39 of the government report states that:

39. This is a matter governed by judicial practice. A minor could testify in court with or without taking the oath depending on the discretion of the judge.

OMCT is concerned by the absence of any commentary on the validity of such a declaration, by a child, before the court and notes that although children after 15 are held fully responsible for their crimes, their status as witnesses would appear to be subject to the whim of the court. This appears somewhat contradictory, and it would be helpful if the government were to provide further information on this area of concern.

OMCT believes that the age of responsibility foreseen in article 53 of the Penal Code does not conform with the convention nor with current civil legislation.

In addition to the fact that the age of responsibility is too low, it is important to note that juveniles who are 15-18 years old can be subjected to life imprisonment.

Torture, Ill treatment or other Cruel or Degrading Treatment: the absence of protection

Whilst OMCT welcomes the positive attitude of the government on most issues, the reporting responsibilities are clear. OMCT feels that the reports handling of the issues of torture and other forms of ill treatment is insufficient.

The Report provides very little information on de facto ill-treatment or torture of children and de jure protection. Given the systematic use of torture of previous regime and the great number of acts committed against children during its years in power, it would seem unlikely that the practices would disappear overnight. As such OMCT feels that the committee should be provided with more information.

Draft Legislation Concerning Torture

Protection from Torture is outlined in Article 18 of the draft constitution part 1 and it states: "*No person shall be subject to cruel, inhuman or degrading treatment or punishment.*"

The first and most fundamental remark OMCT would make is that such protection from torture that currently exists in the draft constitution is, given the long period that this legislation has been draft, effectively meaningless. The new draft constitution of Ethiopia is essentially the same as that approved by the Council of representatives in 1994. It has yet to be enacted.

This is all the more worrying as supplementary legislation provides, as will be seen, little or no protection from torture, Ill treatment or other cruel or degrading treatment for children.

It is therefore imperative that for a meaningful discussion on the enjoyment of children's rights in Ethiopia, that the committee insist that the representatives of the government furnish the committee members with a firm date on when the draft Constitution will become law.

Such as it is, however, OMCT has particular concerns with the draft as it stands. Firstly, whilst the draft constitution condemns torture, there would appear to be no definition. The absence of a definition is further worrying, because the proposed legislation makes no reference to psychological torture, nor does it make mention of penalties mentioned in connection with the act or complicity with such acts.
OMCT would urge the committee to request that the government amend the current draft to contain at the very least, an adequate definition of torture.

Current Legislation Concerning Torture

Since, as has been noted above, the draft constitution remains off the statutes, it is necessary to make observations on legislation in force. As will be seen, these are, to a large extent inconsistent with the Convention.

The provision foreseen when violence is inflicted by a state agent is laid out in Article 117 of the Penal code. The article states:

"Any public servant charged with the arrest, custody, supervision, escort or interrogation of a person who is under suspicion, under arrest, summoned to appear before a court of justice, detained or interned, who in the performance of his duties treats the person concerned in an improper or brutal manner, or in a manner which is incompatible with human dignity or with the dignity of his office, especially the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any similar end, is punishable with fine or simple imprisonment, except where his act may justify the application of more severe punitive provisions"

OMCT is gravely concerned for several reasons:

- Torture can be interpreted as a *"not very serious"* crime by definitions contained within legislation within existing legislation.

In addition to a fine, the perpetrator of the crime of torture can be punished with simple imprisonment. Crimes for which simple imprisonment can be imposed are defined in article 105 of the Penal code as: *"of a not very serious nature committed by persons who are not a danger to society"*.

The sentence foreseen runs from: *"10 days to three years"* [art 105]

Thus within current legislation, in the absence of clear constitutional guidelines to the contrary, the crime of torture is regarded as a crime of a not very serious nature.

As above, it is appropriate to cite article 4.2 of CAT:
"Each state party shall make these offences[torture] punishable by appropriate penalties which take into account their grave nature".

- Aggravation of sanctions, occur only when the court feels that *"his act may justify"*.

This stipulation is undefined. In the absence of any definition it is possible that lesser acts of torture could be treated with the same penalty as extreme cases.

• There is no minimum penalty.
The perpetrator of torture of a child could theoretically look forward to an unstipulated minimal fine (particularly likely where corruption is so pervasive). OMCT does not consider, under any circumstances that the imposition of a fine for the practice of torture is acceptable.

As a state party to the Convention Against Torture Ethiopia is bound to Article 4.2 of the Convention which states: "*Each state party shall make these offences [torture] punishable by appropriate penalties which take into account their grave nature*".

In addition to the derisory punishment foreseen, what is more worrying are the articles of the penal code which evoke certain exceptions. The state agent responsible for torture will be held responsible only to the extent that he or she is seen to have exceeded the orders of his or her superior officer. The penal code states in article 69:

Art.69- Responsibility of person giving an Order.
In the case of an offence under this Code committed on the express order of a person of higher rank whether administrative or military to a subordinate, the person who gave the order is responsible for the act performed by his subordinate and is liable to punishment so far as the subordinate's act did not exceed the order given. (Art. 58 -3).

Art. 70 - Responsibility of the subordinate.
(1) The subordinate who has carried out an order to commit an offence under this Code shall be liable to punishment if he was aware of the illegal nature of the order or knew that the order was given without authority or knew the criminal nature of the act ordered, such as in cases of homicide, arson or any other grave offence against persons or property, essential public interests or international law.
The Court may, without restriction, reduce the penalty (Art. 185) when the person who performed the act ordered was moved by a sense of duty dictated by discipline or obedience; the Court shall take into account the compelling nature of the duty.

(2) The Court may impose no punishment where, having regard to all the circum-

stances and in particular to the stringent exigencies of State or military discipline, the person concerned could not discuss the order received and act otherwise than he did.

(3) In the event of an order being intentionally exceeded the person who exceeded the order is alone responsible for the excess.

The above stipulations would appear to contravene article 2.3 of the CAT which is very clear where it states:
Article 2.3 "An order from a superior officer or public authority may not be invoked as a justification of torture".

Furthermore, OMCT notes with concern that the sanction foreseen for common crimes of violence would appear to be more serious than that of acts of torture against children. Article 538 of the Penal Code sets out general protection measures:

"Whosoever intentionally:
a. wounds a person so as to endanger his life of permanently to jeopardise his physical or mental health ; or

b. maims his body or one of his essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or

c. in any other way inflicts upon another an injury or disease of a serious nature, is punishable, according to the circumstances and the gravity of the injury, with rigorous imprisonment not exceeding ten years or with simple imprisonment of not less than one year."

Rigorous imprisonment is the sanction foreseen for offences of a very grave nature [as defined in Article 107 of the Penal Code].

Given that torture often provokes the kind of outcome defined in article 538., it is important that the government provide supplementary information to the committee, defining how an act of torture would be treated in such circumstances.

Another worrying aspect of the government report are references to sanctioning acts of torture raised by paragraph 192:

192. If the accusation relates to an offence punishable with rigorous imprisonment exceeding 10 years or with death, the court shall direct the public prosecutor to frame a charge (art. 172 (3)). In such a case the juvenile will be tried in the high Court on a formal charge drawn by a public prosecutor. The woreda court can hear cases where the accusation relates to offence ordinarily punishable by up to 10 years of rigorous imprisonment while any grave cases have to be heard before the h igh Court. If the case is less serious and is to be heard by the woreda court the juvenile is tried without any formal charge and usually without the participation of the public prosecutor. There is a special division in the h igh Court that hears cases of juveniles charged with serious crimes.

The stipulation appears to suggest that crimes defined in article 105 of the penal code, as those of a not very serious nature can be tried in a lower court. As has been seen above, torture is defined as just such a crime and could therefore be tried in a lower court. This is all the more worrying given the de facto training of magistrates of such courts. Information suggests that the magistrates have neither the competence, training or experience to deal with such cases and are open to bribes. It is therefore imperative that the government determine where and under what circumstances the perpetrator of the crime of torture against a child would be held.

Recommendations

OMCT must recommend that the government amend the relevant sections of the penal code which would appear to be in contravention with both Convention against Torture and the CRC. It is vital that the crime of torture is treated as an extremely serious crime and which must be punished with a gravity matching that of the crime.

Furthermore, we would urge that the government amend section 69 and 70 of the penal code. Finally we would urge the committee to request the government to provide more information on this subject.

The Right to Redress

OMCT has to express its concern over the lack of details contained within the government report with regard to the possibility for the child to obtain redress and indemnisation with particular reference to torture and other forms of ill treatment. Furthermore, OMCT would urge the committee to press the government to provide further clarification on administrative measures that exist for the provision of rehabilitation.

Corporal Punishment as a Punitive Measure

Paragraph 19 of the Government Report lays out the Draft Constitutions' articles on protection on the rights of the child. It states in Article 36/1/(e) that every child has the:
"right to be free from harsh and inhuman punishments that may be inflicted on his body, in schools or child care institutions".

With regard to the draft, OMCT is concerned over the absence of explicit protection for children in both the familial and penal environment.

Current Legislative Protection.
As has been noted, the Constitution remains off the statutes. Where existing legislation is concerned, there would appear to be little enjoyment of this right. Throughout both the Penal code and the Code of Criminal Procedure the use of corporal punishment is referred to as a right, for example, Article 64 of penal code refers to this right stating:
" (b) acts reasonably done in exercising the right of correction or discipline."

OMCT is deeply concerned by this stipulation, the Committee on the Rights of the Child has made its view on the corrective discipline extremely clear — the use of corrective discipline lies at odds with the Convention.

Furthermore, the limitations of such mistreatment are laid out in Article 348 part 1 of the Penal Code stating:

"whosoever… deliberately neglects, ill-treats, over - tasks or beats him in such a way as to affect or endanger gravely his physical or mental development or his health, is punishable with simple imprisonment for not less than one month".

Clearly, a punishment which results in grave damage to the physical and psychological integrity of a child, as Article 548 foresees, is an extremely serious crime.

However, once again, the Ethiopian Penal code foresees a punishment of simple imprisonment. As has been laid out earlier, definitions of such imprisonment are outlined Article 105 of the Penal Code and would appear to be imposed for crimes of a not very serious nature.

Furthermore Article 548 is further weakened by a number of exceptions. Part 2 of Article 548 states:
"the right to administer lawful and reasonable chastisement is not subject to this provision[art 548 Part 1]".

Thus in conclusion, acts reasonably done in exercising the right of correction or discipline [Art 64] which endanger gravely his physical or mental development or his health [Art 548] can be regarded as lawful and reasonable chastisement [Art 548] in the state of Ethiopia. By consequence the perpetrator of such a crime would appear to be subject to no sanction.

Conclusion

Whilst the legislation conforms with the CRC, it would appear to contradict article 19 of the CRC, the obligation to protect the child against ill treatment.

The adequate protection of the physical and psychological integrity of the child is central to conformity with the convention, and current legislation must be amended as soon as possible.

Physical Chastisement in Institutions

Article 172 of the penal code sets out the legislation concerning the use of corporal punishment. It makes reference to the utility of corporal punishment as a reforming measure. It states:

"When a young offender is contumacious the Court may, if it considers corporal punishment is likely to secure his reform, order corporal punishment. Corporal punishment shall be inflicted only with a cane and the number of strokes shall not exceed twelve to be administered on the buttocks. Only young offenders in good health shall be subjected to corporal punishment."

OMCT in no way considers, under any circumstances, that the practice of corporal punishment is "likely to secure" reform. The use of corporal punishment lies at odds with the spirit and letter of the Convention on the Rights of the Child. It is clearly in breach if article 37(a) of the CRC which states:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

OMCT notes that although the CRC has not made general comment on the use of such punishment, the h uman Rights Committee has taken a very clear stand on this issue.

The Human Rights Committee, General Comment 7 HRI\GEN\1\Rev.1 at 7 (1994).

Paragraph 2 states:
"...the prohibition [of torture]must extend to corporal punishment, including excessive chastisement as an educational or disciplinary measure... Moreover, the article clearly protects not only persons arrested or imprisoned, but also pupils and patients in educational and medical institutions."

OMCT is deeply concerned over the view of corrective discipline as a right. It would appear to pervade the Penal Code and society at large. Particularly worrying are the measures open to the authorities when placing a child in a corrective institute. Article 173 of the penal code allows:
"special measures for safety, segregation or discipline can be applied to him in the general interest".

OMCT is concerned by these special measures, in particular those that refer to discipline. These measures would appear to be applied in addition to measures foreseen by the courts and it would appear important that the committee be informed of the nature of these "*special measures*".

Conclusion:
Article 172 of the penal code contravenes article 37 of the CRC and OMCT notes once again that Ethiopia is state party to the Convention Against Torture which firmly forbids such practices.

The adequate protection of the physical and psychological integrity of the child is central to conformity with the convention, and current legislation must be amended as soon as possible.

General Protection from Violence for Children

Article 538 of the Penal Code sets out general protection measures against violence. It states:
"*Whosoever intentionally:*

a. wounds a person so as to endanger his life of permanently to jeopardise his physical or mental health ; or

b. maims his body or one of his essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or

c. in any other way inflicts upon another an injury or disease of a serious nature, is punishable, according to the circumstances and the gravity of the injury, with vigorous imprisonment not exceeding ten years or with simple imprisonment of not less than one year." [emphasis added]

Thus it would appear that under certain such circumstances, the legislation foresees the imposition of simple imprisonment. As has been seen on a number of occasions above, the definition of simple imprisonment is defined in Article 105 of the Penal Code as being for:
"*offences of a not very serious nature*".

And once again, the punishment foreseen for such a crime in Article 105 part (1) *"may extend for a period of from 10 days to three years"*

OMCT believes that violence of the level described above can never be described as not very serious, particularly when inflicted upon children, the least able to defend themselves. The discretionary powers that it offers the judiciary are too extensive, particularly so in a society which is so politically, socially and economically divided as Ethiopia.

Recommendations

OMCT would request that the government amend Article 538 of the penal code and ensure that acts of extreme violence are punished with a severity that matches the gravity of the crime.

Children in Conflict with the Law

OMCT has several concerns about the legislation with regard to children in conflict with the law:

It is worth repeating the central concerns of the age of penal responsibility contained in the government report. It defines a minor is several different ways for example in paragraph 35 a minor is defined as under 18.

35. The Civil Code of 1960 defines the word child as a "minor" of either sex who has not attained the full age of 18 years. This definition is compatible with that provided in the Convention the Rights of the Child. Though the age of attaining majority is 18 years. For specific purposes a child may be emancipated at an earlier age. Emancipation takes places either by marriage or upon authorisation of the family council.

Throughout the report, the government makes reference to different and contradictory ages of the child. These contradictions have an impact on the rights of the child with particular reference to those rights covered by the mandate of OMCT.

With regard to giving testimony in court paragraph 39 of the government report

states that on the subject of giving testimony in court:

39. This is a matter governed by judicial practice. A minor could testify in court with or without taking the oath depending on the discretion of the judge.

OMCT is concerned by the absence of any commentary on the validity of such a declaration by a child before the court and notes that although children after 15 are held fully responsible for their crimes, their status as witnesses is subject to the whim of the court This appears somewhat contradictory. It would be helpful if the government were to provide further information on this area of concern.

Extensive Discretionary Powers of Arrest

The stipulations in Article 171 of the Penal Code give enormous powers of arrest to the authorities.

"(1) Whosoever, having no fixed abode or occupation and no regular or visible means of support, and being able bodied, habitually and of set purpose leads a life of vagrancy or disorderly behaviour, or lives by his wits or by mendicancy, refusing to take honest, paid work which he is capable of doing, thereby constituting a threat to law and order is punishable with restriction of personal liberty or with simple imprisonment not exceeding 6 months."

It is clear that in a country where the majority of its people live in absolute poverty the wording *"having no fixed abode or occupation and no regular or visible means of support, and being able bodied, habitually and of set purpose leads a life of vagrancy or disorderly behaviour, or lives by his wits"* can be applied extremely widely. It is clear that these powers, as has been pointed out with similar legislation in other countries by OMCT, are used by the police against socially and economically disadvantaged groups, particularly street children and increase the chances of arbitrary arrest and abuse.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("*The Beijing Rules*"), in its commentary on Rules 6.1, 6.2 and 6.3 of the importance of establishing a balance in the juvenile justice system between:

"the need to permit the exercise of discretionary power... and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender".

Moreover, the Beijing Rules emphasise that laws dealing with children should aim to "minimise the necessity of intervention by the juvenile justice" — It would appear that extensive discretionary powers are enjoyed without any counter-balance and the result is abuse.

Arrest Procedure

The greatest threat to the physical and psychological threat to the integrity of a child come in the initial hours after the child has been detained. As has been discussed above, whilst good procedural guidelines and practice will not eliminate the practice of torture, they are a necessary condition in reducing the opportunities for abuse. The U N Beijing Rules stress the critical nature of this initial contact between the authorities and emphasise in Paragraph 10.3 that

"Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case."

The explanatory notes stress that harm should be interpreted in its broadest sense. The rules place great emphasis on the need for rapid intervention to ensure that harm does not ensue, stating in Paragraph 10.2:

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

The Government report states that a separate system of procedure exists for

children in conflict with the law and indeed Article 172 of the criminal procedure code refers to the need to bring the child "*immediately*" before the court. however, according to various national sources this is not applied. De facto, it would appear that the legislation used is that which applies to adults. These are laid out in article 58 and 29 of the Code of Criminal Procedure with reference to adults:

Article 58 - Handing over of the arrested person.
(1) Where an arrest is made the person making the arrest shall without unnecessary delay hand over the person so arrested to the nearest police station.

Article 29 - Procedure after arrest
(1) Where the accused has been arrested by the police or a private person and handed over to the police the police shall bring him before the nearest court within 48 hours of his arrest or so soon thereafter as local circumstances and communications permit. The time taken in the journey shall not be included.

OMCT has several concerns. With regard to Article 56 "*without unnecessary delay*" is left undefined and, as such, presents the arresting officer without clear guidelines. It would seem appropriate that the Government of Ethiopia present the committee with further information on this issue.

With regard to Article 29, OMCT is concerned that 48 hours is considerably longer than provided for in other legislatures, which for the most part foresee 24 hours. In addition, this stipulation sets out that additional time may be permissible "*as local circumstances and communications permit*" there are no limits or restrictions on this stipulation. Furthermore, the time does not include the journey time taken. These measure would appear give enormous scope to the authorities to detain children for a great length of time which could have severely negative consequences for the child.

The de facto practice, suggests that children are often detained for long periods without a warrant. What little protection exists is overlooked. Ethiopia must be requested to take the appropriate steps to assure that Article 172 is applied.

Further Special Powers of Detention

In addition to these extensive discretionary powers or detention, additional powers are granted to the authorities when investigating crimes. Article 59 of the Code of Criminal Procedure part 2 states:

"(2) Where the police investigation is not completed the investigating police officer may apply for a remand for a sufficient time to enable the investigation to be completed.

(3) A remand may be granted in writing. No remand shall be granted for more than 14 days on each occasion"

There would appear to be no measure other than the detention and OMCT is concerned similarly by the length of detention which would cause a great deal of suffering.

Secondly, OMCT is concerned by the words *"on each occasion"*. The law does not place any limits on the number of times that the stipulation can be applied and reapplied. Furthermore, there do not appear to be any other measures available, other than detention. The legislation would appear to be open to abuse, permitting long periods of detention even if there is no sentence.

This de jure problem is observed de facto. According to information from diverse sources this rule is regularly abused by the Police and the Wereda courts. Police repeatedly apply for remand in one case and the wereda judges, who have little or no legal training, grant them more time without asking questions. Even where the case requires no further investigation the wereda judges grant remand to the Police.

Recommendations:
Clearly this stipulation presents enormous dangers to the integrity of the child and the Government must amend the legislation in order to avoid its arbitrary imprisonment.

Pre-Trial Detention

The legislative provisions regarding bail and pre-trial detention are the following

"*Bail is not allowed in murder cases where the punishment provided by law is death or rigorous imprisonment for more than 15 years and where the victim died or is likely to die*" (Article 63/1 of the Code of Criminal Procedure).

Bail will only be turned down under the circumstances laid out in Article 67 of the Code of Criminal Procedure where:

"*(a) The applicant is of such a nature that it is unlikely that he will comply with the condition laid down in the bond.*

(b) The applicant, if set at liberty, is likely to cause another offences

(c) The applicant is likely to interfere with the witnesses or tamper with the evidence."

OMCT is concerned that a recidivist child would seem to stand little chance of bail under such circumstances and given current arrangements would be detained with adults and consequently, face a threat to their physical integrity.

Information on the de facto situation suggests that the granting of bail, under all circumstances is subject to long delay. The public prosecutor does not usually respond promptly, the court seems unwilling to consider the issue with any great haste, in some cases granting of bail has been delayed up to a month. Bail is often subject to exorbitant monetary demands (EHRC Democracy, Rule of Law and Human Rights in Ethiopia Rhetoric and Practice).

The Right to Legal Representation

A further issue is raised by Article 195 of the criminal procedure code which foresees certain conditions under which a child would not have the right to legal representation stating:

195. The Criminal Procedure Code

qualifies the juvenile's right to counsel. Article 174 states that the court shall appoint an advocate to assist the young person where no parent, guardian or other person in loco parentis appears to represent the young person or the young person is charged with an offence punishable with imprisonment exceeding 10 years or with death. According to this article, therefore, a juvenile has the right to representation by State-appointed counsel whenever he and his parents are too poor to hire one privately. But this right may be restricted where the offence is very serious and, regardless of the seriousness of the offence, where he is represented by his parent, guardian or other person in loco parentis.

40.2b iii of the CRC is very clear on this issue:
(iii) To have the matter determined without delay by a competent, indépendant and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or here parents or legal guardians;

OMCT feels that it would be appropriate that the government provide further information on this issue and state under what circumstances that this could occur.

Separation from Adults in Detention

One of the fundamental priorities for OMCT is that detained children be held separate from adults. The risks to a child, detained with adults, both to their physical and psychological integrity are enormous.

The proposed draft constitution in part conforms in spirit with this belief that in article 36/3 that:
"Juvenile delinquents or children under the care of rehabilitation centres or children growing up in Government aid or children under the care of government or private orphanages should be segregated from adults.

In discussing the draft, OMCT is concerned by the use of the conditional should. In English, the conditional should is not a strong imperative, rather an advisory. The implications of detaining children with adults are extremely serious and can have ramifications for both the physical and psychological integrity of the child. The language of legislation must reflect this.

Current legislation, reflects this advisory rather than imperative approach. Under certain conditions legislation allows for the detention of certain children in adult penal institutions. Article 173 of the Penal Code deals with such provisions

Art. 173. Imprisonment.
1) When a young offender has committed a serious offence which is normally punishable with a term of rigorous imprisonment of ten years or more or with capital punishment the Court may order him to be sent:

a) either to a corrective institution (Art. 166) where special measure for safety, segregation or discipline can be applied to him in the general interest; or

b) to penitentiary detention institution if he is incorrigible and is likely to be a cause of trouble, insecurity or corruption to others. The principle of segregation shall be applied in this case. (Art. 109 [2]).

OMCT notes that a child of age 15-18 can be punished with life imprisonment see below.

OMCT feels that it is appropriate that the Government provide details on how the court arrives at a definition of an incorrigible child.

The government reports admits that de facto that children are not *"kept separated from adult prisoners"* [government report para 13]. OMCT would urge that the government outline what measures it is planning to amend this intolerable situation.

Regular Medical Examinations

OMCT is also concerned over the stipulation regarding a detained childs right to medical examination. Children in detention should have regular medical examinations the stipulations of article 34 of the Criminal Procedure limit this to the decision of the Officer in charge. Article 34 states:

Art. 34.- Physical examination.
(1) Notwithstanding the provisions of Art. 20 Civil Code where an investigation police officer considers it necessary, having regard to the offence with which the accused is charged, that a physical examination of the accused should be made, he may require him to record in writing the results of such examination. Examination under this Article shall include the taking of a blood test.

OMCT would urge the government to amend the legislation to ensure that children receive appropriate medical attention whilst in detention.

Heavy Sentencing

The provision relating to juvenile sentencing is given in article 173 of the Penal code

Art. 173/2) The Court shall determine the period of detention to be undergone according to the gravity of the act committed and having regard to the age of the offender at the time of the offence. It shall not be for less than three years and may extend to a period of ten years (...)

In such a case the Court shall, without restrictions, take into account, in determining the duration of the detention to be undergone, the time spent in the corrective institution and the results unfavourable or otherwise thereby obtained.

OMCT notes that these dispositions apply to young offenders who have committed serious offences. Article 56, 107 and 173.1 of the Penal code concern juveniles aged between 15 and 18. Juveniles who fall into

this age group and have committed a particularly grave crime and considered as dangerous to society could face a penal sanction for life.

Art. 107.- Rigorous Imprisonment. - (1) Rigorous imprisonment is a sentence applicable only to offences of a very grave nature committed by offenders who are particularly dangerous to society. Besides Providing for the punishment and for the rehabilitation of the offender, this sentence is intended also to provide for a strict confinement of the offender and for protection to society. Without prejudice to conditional release, the sentence of rigorous imprisonment is normally for a period of one to twenty-five years but where is expressly so laid down by law it may be for life.

These measures contravene Article 37 (a) of the CRC which states:

(a) "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age".

Solitary Confinement

The Convention on the Rights of the Child is extremely explicit when discussing the conditions under which a child should be detained. Children should be detained only as a measure of last resort. Such detention, when used should be aimed at reform and never as a punitive measure.

As such OMCT has serious concerns over the following stipulation of the penal code which allows for the detention of a child for up to 3 months at a time.

Art. 111. Improved treatment in prisons. *With a view to ensuring that the sentence has the effect of reforming the prisoner and of enabling him to resume a normal social life on his release, the execution of the sentence shall be carried out in accordance with the following provisions in this article and with such other*

provisions as may be laid down by regulations relating to prisons:

1) The Director of Prisons may, whenever it appears to him necessary so to do, impose solitary confinement at the beginning or in the course of the execution of the sentence.
Such confinement shall in no case exceed three months at a time and before imposing any period of confinement the Director shall consult a doctor and where it appears necessary a psychiatrist.

2) The prisoner shall be bound to work either alone or together with others according to the requirements and conditions prevailing at the time.
Outside periods of work and during the night, prisoners shall, as far as possible, be kept isolated.

OMCT would request that the government explain under what circumstances and what behaviour, on the part of the child would lead to such a measure.

Secondly OMCT would request that the government outline the means to recourse open to the the child against the use of such measures.

The United Standard Minimum Rules for the Treatment of Prisoners states in principal:

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and particular his family or counsel, shall not be denied for more than a matter of days.

OMCT is concerned that it is unclear as to who the competent authority to decide the competence of such a decision. Finally there would appear to be no limit to the number of times that such a punishment could be imposed.

The UN Rules for the Protection of Juveniles deprived of their liberty states in Article 67:
"67 All disciplinary measures constituting cruel inhuman or degrading treatment shall be strictly prohibited, including... solitary confinement".

The Human Rights Committee, General Comment 7 HRI \ GEN \ 1 \ Rev.1 at 7 (1994) goes further stating:

"solitary confinement may, according to the circumstances... be contrary to this article [Article 7 ICCPR "No one shall be subjected to Torture..."]

In conclusion, OMCT considers that the legislation is extremely loosely defined, likely to be applied to juveniles and presents a grave threat to their psychological and physical integrity and under certain circumstances would appear to contradict Article 37(a) of the CRC which states:

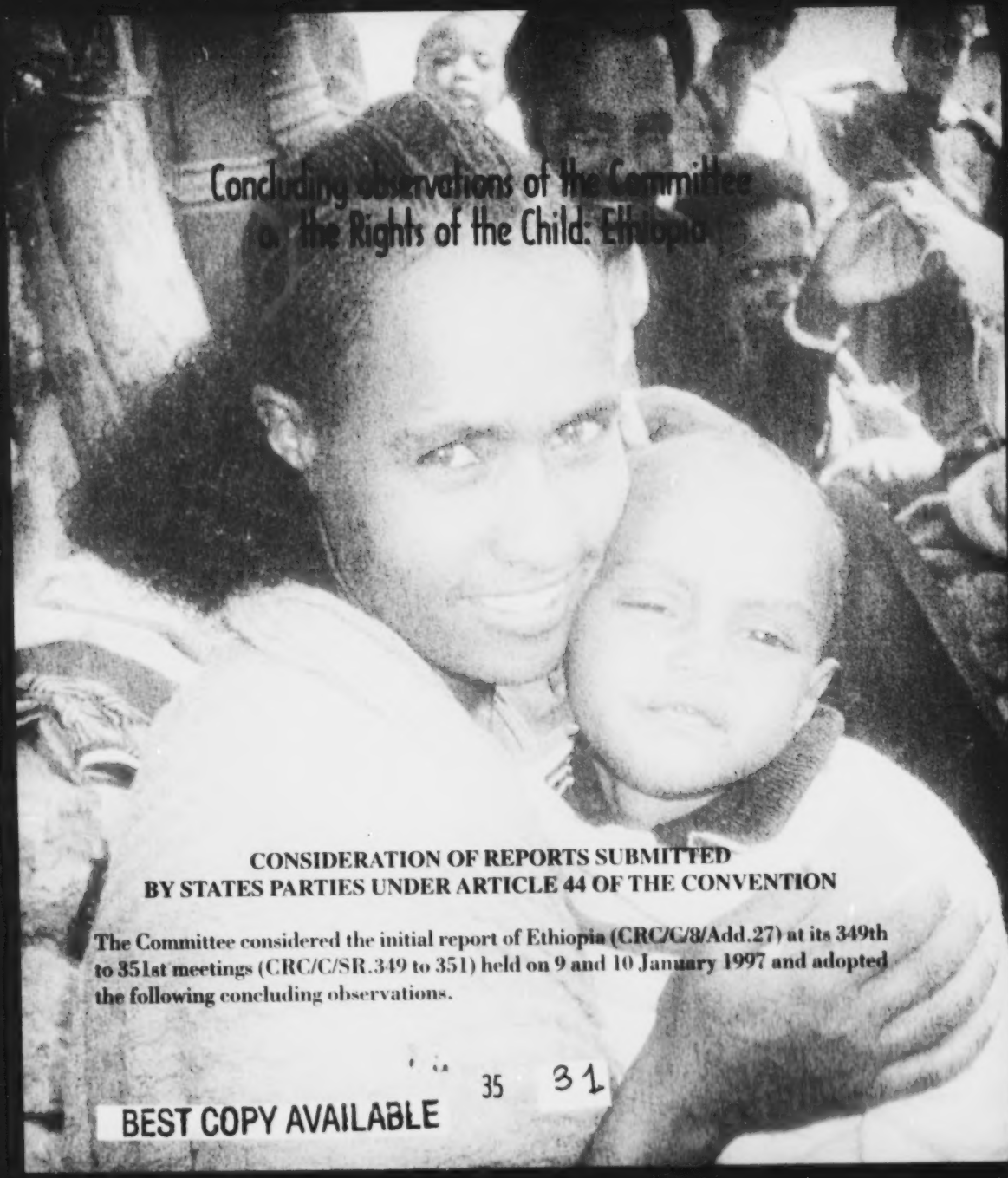
(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

Children in Conflict with the Law
Conclusions:

OMCT is concerned by a great number of aspects of both legislation and practice, where children are concerned. Measures would appear to give excessive powers to the authorities and would appear to operate without the benefit of effective checks and balances.

A fundamental condition for enjoyment of rights is the need for a properly trained and educated police force, which for understandable economic reasons is absent in Ethiopia. Thus, these extensive powers are given to a police force who, are not equipped to discharge these powers.

The current legislation and de facto practice can only present clear dangers to the liberty and integrity of the child, particularly those from low economic and social status. In the view of OMCT a complete review of the criminal justice system as it relates to children would be appropriate.



Concluding observations of the Committee on the Rights of the Child: Ethiopia

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

The Committee considered the initial report of Ethiopia (CRC/C/8/Add.27) at its 349th to 351st meetings (CRC/C/SR.349 to 351) held on 9 and 10 January 1997 and adopted the following concluding observations.

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A. Introduction

The Committee expresses its appreciation to the State party for engaging in an open and constructive dialogue with the Committee. It welcomes the submission of the initial report of Ethiopia, which follows the Committee's guidelines for the preparation of States parties' initial reports, as well as written answers to its list of issues, although it notes that a number of the questions asked were not answered. The Committee particularly wishes to express its satisfaction at the self-critical approach of the report in identifying a number of areas of concern, and it welcomes the willingness expressed by the delegation that the suggestions and recommendations made during the discussion would be duly taken into account by the Ethiopian authorities.

B. Positive factors

The Committee notes with appreciation the steps taken since 1991 to set up democratic institutions in the country. It welcomes the adoption of a new Constitution, which incorporates international standards in the field of human rights, including, in its article 36, a specific reference to some of the rights enshrined in the Convention on the Rights of the Child.

The Committee notes with satisfaction that the Convention, as well as other international treaties dealing with human rights, are incorporated into domestic law, and that article 13 of the Constitution states that human rights provisions of the Constitution are to be interpreted in line with international human rights instruments ratified by Ethiopia.

The Committee also welcomes the political commitment within the country to improve the situation of children, which finds expression notably through the setting up of an Inter-ministerial Legal Committee to review national legislation and its compatibility with the provisions of the Convention, through the establishment of Committees on the rights of the child at the national, regional, zonal and woreda levels, as well as through the adoption of a National Plan of Action and the establishment of a Ministerial Committee to monitor its implementation.

The Committee is encouraged by the combined efforts undertaken by the Government and international or non-governmental organizations to protect and promote children's rights, in particular in the field of information on HIV/AIDs, and information campaigns on harmful traditional practices affecting children. With regard to the latter, the Committee welcomes the setting up of the National Committee on Traditional Practices, established to develop information and sensitization campaigns on all forms of harmful traditional practices affecting the health of women and children, with a particular emphasis on female genital mutilation.

The Committee notes with appreciation that primary education has been made free, although it regrets that it has not yet been made compulsory.

C. Factors and difficulties impeding the implementation of the Convention

The Committee acknowledges that the State party has had to face, during the past few years, economic, social and political challenges, due inter alia to years of civil war and the transition to democracy. It notes the existence of inter-regional and urban/rural disparities, in particular with regard to the availability of resources and infrastructure, which may lead to discrimination in the enjoyment of the rights provided for in the Convention.

Furthermore, the Committee notes that certain traditional practices and customs, prevailing particularly in rural areas, hamper the effective implementation of the provisions of the Convention, especially with regard to the girl child.

D. Principal subjects of concern

The Committee notes that, although the notification of the ratification of the Convention by Ethiopia was published in the Official Gazette, the full text of the Convention has to date not been published in the Gazette, thus making it difficult for law enforcement officials, judicial personnel and other professionals working with and for children to have access to and an understanding of its provisions.

The Committee also notes that there is a lack of awareness and understanding in the State party of the principles and provisions of the Convention.

In this regard, the Committee is concerned at the lack of adequate and systematic training provided to law enforcement officials, judicial personnel, teachers, social workers and medical personnel. The Committee further notes that insufficient attention has been paid in practice as well as in the legislation to the principles of the best interests of the child, respect for the child's views and the child's participation in family, social and school life.

The Committee notes with concern the lack of adequate mechanisms for the collection of reliable quantitative and qualitative data on the situation of children throughout the country, which hinders the effective assessment by the authorities of the situation of each and all groups of children in all parts of the country, and thus makes the adoption of targeted policies in the field of the protection of the rights of children difficult.

The Committee expresses its concern about the negative effects of poverty on the situation of children in Ethiopia, as illustrated by the high levels of infant and under-five mortality rates and malnutrition, and at the low levels of school enrolment, education, immunization coverage and health services in general.

The Committee notes with concern the non-compatibility of certain provisions of domestic law with the principles and rights enshrined in the Convention, such as the provision for a different minimum age of marriage between girls (15 years of age) and boys (18 years of age), the provision in the Penal Code for the possibility to sentence children to corporal punishment, the provision in the Civil Code for "*light bodily punishment*" as an educative measure within the family and the limitation of the right to counsel when the child may be represented by his or her parents or legal guardian during legal proceedings.

The Committee remains concerned at prevailing traditional attitudes and harmful practices, such as female genital mutilation, early marriages and teenage pregnancies, and at the persistence of

discriminatory social attitudes against vulnerable groups of children, such as the girl child, disabled children, children born out of wedlock and children affected by or infected with HIV/AIDs, including orphans.

The Committee is concerned that insufficient steps have been taken to ensure the registration of children after birth and that the State registration procedure is hampered in practice by the lack of registration's desks, especially in rural areas. The Committee also expresses its concern in relation to the lack of adequate means available for the registration of refugee children.

The Committee is concerned that, since children are able to lodge complaints only through their parents or legal guardians, the right to adequate recourse and complaint procedures for children victim of abuse, including sexual abuse, neglect or ill-treatment within their families does not seem to be secured. The Committee is also concerned that the enjoyment by children of their right to participate actively in the promotion of their own rights does not seem to be guaranteed.

The Committee is concerned at the low levels of school enrolment and at the high drop-out rates, especially among girls, at the lack of learning and teaching facilities and at the shortage of trained teachers, in particular in rural areas. It shares the concerns expressed in the State party's report that the school curricula are divorced from cultural and social realities, and regrets that it does not yet include a programme of education on human rights and children's rights. Moreover, the Committee expresses the concern, as mentioned above, that primary education has not yet been made compulsory.

The Committee expresses the concern that the systems of national and intercountry adoptions are not fully in conformity with the provisions of article 21 of the Convention, in particular article 21 (a), and with the principles of the best interests of the child and respect for his or her views.

The Committee is also concerned at the situation of children in especially difficult circumstances, including children living and/or working in the street, and at the incidence of child labour, in particular in the informal sector.

The Committee is deeply concerned at the present system of juvenile justice, which is not in conformity with articles 37, 39 and 40 of the Convention. It is particularly concerned about the age of criminal responsibility at 9 years and that as from the age of 15 years, children are treated as adults. In this regard, the Committee regrets that it has not been made clear during the discussion whether the latter meant that children above 15 years of age may be sentenced to life imprisonment or detained together with adults. Furthermore, the Committee expresses concern at the possibility, mentioned above, provided for in article 172 of the Penal Code to sentence children to corporal punishment, at the sole discretion of the judge, in particular with regard to the "*bad or good character*" of the child, in determining the penalty to be applied to the child, and at the possible limitations of the right to legal counsel.

In the light of article 39 of the Convention, the Committee is also concerned at the insufficient measures taken by the authorities for the physical and psychological recovery and social reintegration of children victim of war.

E. Suggestions and recommendations

The Committee recommends that the full text of the Convention be published in the Official Gazette and that training manuals incorporating the text of the Convention be published for the professional groups working with or for children.

The Committee encourages the Government to continue its efforts aiming at promoting awareness and understanding of the principles and provisions of the Convention, in the light of article 42 of the Convention, in particular by ensuring the translation and publication of the text of the Convention in all national languages. Such measures would promote change in persisting negative attitudes towards children, particularly girls, disabled children, children born out of wedlock, children affected by or infected with HIV/AIDs, including orphans, and contribute to abolishing traditional practices prejudicial to the health and well-being of children, such as female genital mutilation, early marriages and teenage pregnancies. Such efforts should be pursued in close co-operation with community and religious leaders and

non-governmental organizations, at all levels of the State, i.e. national, regional, zonal and woreda level, and special emphasis should be laid on the necessity to coordinate the policies designed to implement the Convention between central and local authorities.

The Committee also encourages the State party to provide systematic training on the principles and rights enshrined in the Convention to the professional groups working with and for children, such as law enforcement officials, judicial personnel, personnel in child care institutions, teachers, social workers and medical personnel, as well as to the personnel entrusted with the task of ensuring data collection in the areas covered by the Convention. Similarly, attention should be given to incorporating the Convention in school curricula, as recommended by the General Assembly in proclaiming the United Nations Decade for human Rights Education and by the Vienna World Conference on human Rights of 1993.

The Committee also recommends that the State party strengthen coordination between the various governmental mechanisms involved in children's rights, at both the national and local levels, with a view to developing a comprehensive policy on children and ensuring effective evaluation of the implementation of the Convention in the country. It further recommends that the setting up of an independent mechanism, such as an Ombudsperson on the Rights of the Child or a Human Rights Commission, to ensure observance of children's rights, be considered.

The Committee recommends that the system of data collection be improved at the central and local levels of the State, and that it comprises all the areas covered by the Convention. Such system should include all groups of children, with a particular emphasis on vulnerable groups of children and on children in especially difficult circumstances, and adequate disaggregated data should be identified with a view to assessing progress achieved in the realization of children's rights and defining the policies to be adopted towards a better implementation of the provisions of the Convention. With regard to the latter, the Committee suggests that further studies and follow-up surveys on vulnerable groups of

children be initiated and it recommends that the State party consider requesting technical assistance from UNICEF to address this question.

The Committee recommends that the Government pursue the process of bringing existing legislation into line with the provisions of the Convention and that the best interests of the child be fully taken into account in the drafting of new legislation. In this regard, the Committee particularly recommends that the provisions for the minimum age of marriage for girls at 15 years, the sentencing of children to corporal punishment, the "*light bodily punishment*" as an educational measure within the family and the limitation of the right to legal counsel of children, be abolished as a matter of priority.

The Committee recommends that, with respect to the implementation of article 4 of the Convention, budget allocations should be made to the maximum extent of the State party's available resources and should give priority to the realization of the economic, social and cultural rights of children, including the rights to health, education and rehabilitation, and that particular attention be paid to children belonging to the most disadvantaged groups, such as girls, disabled children, children living in rural areas, children living and/or working in the street, children involved in the administration of juvenile justice system and children affected by or infected with HIV/AIDs, including orphans. In this regard, and with a view to contributing to the maximum use of scarce resources, the Committee recommends that the State party accord greater attention to the development of a primary health-care system, which would develop a culture of nutrition, hygiene and sanitation education.

The Committee recommends that special efforts be developed to guarantee an effective system of birth registration, in the light of article 7 of the Convention, to ensure the full enjoyment of their fundamental rights by all children. Such a system would serve as a tool in the collection of statistical data, in the assessment of prevailing difficulties and in the promotion of progress in the implementation of the Convention. Similarly, the Committee recommends that an adequate system of registration of refugee

children be established to ensure that their rights are protected.

The Committee also recommends that greater efforts be made to promote the participation of children in family, school and social life, and the effective enjoyment of their fundamental freedoms, including the freedom of opinion, expression and association.

With reference to the implementation of article 19 of the Convention, the Committee recommends that a system of complaints aimed at children victim of any form of violence, abuse, including sexual abuse, neglect, maltreatment or exploitation, even while in the care of their parents, be established, as a means to ensure protection of and respect for their rights. It further recommends that cases of abuse be properly investigated, sanctions applied to the perpetrators and publicity given to the sanctions applied to such crimes. The Committee also recommends that a comprehensive and integrated public information campaign be elaborated with a view to preventing and combating all forms of abuse of children and that all necessary measures be taken to ensure the physical and psychological recovery and the social reintegration of children victims of the war, in the light of article 39 of the Convention.

The Committee recommends that appropriate legislative measures be adopted and implemented with regard to adoption of children, in the light of the principles of the best interests of the child and respect for his or her views and articles 20 and 21 of the Convention. Furthermore, the Committee recommends that the State party consider ratifying the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993.

In the area of child labour, the Committee recommends that appropriate measures be adopted with a view to reflecting fully the Convention, in particular article 32, in legislation and practice and suggests that consideration be given by the State party to ratifying ILO Convention No138 on minimum age for admission to employment. The Committee also suggests that the State party consider seeking cooperation with ILO in this area.

With regard to the administration of juvenile justice, the Committee recom-

mends that legal reform be pursued and that the State party take fully into account the provisions of the Convention, in particular articles 37, 39 and 40 as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The Committee also recommends that the State party avails itself of the technical assistance programmes of the High Commissioner / Centre for Human Rights and the Vienna Crime Prevention and Criminal Justice Division.

The Committee recommends that special protection measures be adopted and implemented in relation to children living and/or working in the street, children in conflict with the law, in particular those deprived of liberty, children affected by or infected with HIV/AIDs, including orphans, abused and exploited children and children involved with child labour.

The Committee recommends that a meeting be organized, gathering international organizations working in the country, including agencies and organizations of the UN system and non-governmental organizations, and competent national authorities, with the aim of assessing the needs for further international assistance with regard to the promotion and protection of the rights of the child.

The Committee recommends that the State party's next periodic report incorporate information on the measures taken and progress achieved in the implementation of the suggestions and recommendations made by the Committee in the present concluding observations.

Finally, the Committee recommends that in the light of article 44, paragraph 6, of the Convention, the initial report and written replies presented by Ethiopia be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention, its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations.

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